

AGENDA — July 31, 2001 Business Taxes Committee Meeting
Proposed Regulatory Changes Regarding Application of Tax to Sales for Resale
(Assessment Against Purchaser)
Regulation 1668, Resale Certificates

<p>Action 1 — Consent Item(s)</p> <p>Proposed revision to Regulation 1668, Resale Certificates, other than subdivisions (b)(1)(E) and (b)(3).</p> <ol style="list-style-type: none">1. Minor grammatical and reformatting revisions to enhance understanding. Exhibit 3, pages 1 – 11.2. Clarify that resale certificate remains in effect until revoked in writing. Exhibit 3 , pages 1.3. Incorporate the use of XYZ letters into regulation. Exhibit 3, pages 6 – 7.	<p>Adopt proposed revisions as agreed upon by interested parties and staff to:</p> <p>Clarify the seller’s burden of proving that a sale is for resale, and clarify the purchaser’s liability for tax when purchasing under a resale certificate or for resale;</p> <p>Incorporate specific provisions on the use of the Board’s confirmation letters (form BOE-504), hereinafter referred to as XYZ letters;</p> <p>Reformat the text in the general resale certificate;</p> <p>Replace the text “The signature of the purchaser or an agent or employee of the purchaser” in subdivision (b)(1)(A) with “The signature of the purchaser, purchaser’s employee or authorized representative;”</p> <p>Move the general resale certificate and the resale certificate for the auto body repair and painting industry to new Appendices A and B respectively and replace the text “Signature of Purchaser or Authorized Agent” with “Signature of Purchaser, Purchaser’s Employee or Authorized Representative” in the signature section of the certificates;</p> <p>Make minor grammatical and formatting revisions; rearrange some of the current subdivisions within the regulation to enhance understanding; and change the title of the regulation from “Resale Certificates” to “Sales for Resale.”</p>
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<p>Action 2 —</p> <p>Amend the parenthetical sentence regarding date on resale certificate (b)(1)(E).</p> <p>Exhibit 2, page 1.</p>	<p>Adopt either:</p> <ol style="list-style-type: none"> 1) Staff's recommendation to amend the parenthetical sentence in (b)(1)(E), or 2) Interested party's proposal to not amend the parenthetical sentence in (b)(1)(E).
<p>Action 3 —</p> <p>Responsibility of purchaser who issues a blanket resale certificate and subsequently issues a purchase order indicating that the transaction is taxable.</p> <p>Exhibit 2, pages 1 – 2.</p>	<p>Adopt either:</p> <ol style="list-style-type: none"> 1) Staff's recommendation not to incorporate language into subdivision (b)(3) which would specify the type of documentation required to satisfy the purchaser's burden of establishing that a purchase order was sent to and received by the seller in subdivision, or 2) Interested party's proposal to have staff develop and incorporate language into subdivision (b)(3) which would specify what type of documentation is required to satisfy the purchaser's burden of establishing that a purchase order was sent to and received by the seller.
<p>Action 4 — Approval to Publish</p>	<p>Recommend the publication of the proposed amendments to Regulation 1668 as adopted in the above actions.</p> <p>Operative Date: None with the exception of (b)(1)(E) which will become operative January 1, 2002.</p> <p>Implementation: Implementation will take place 30 days following approval by the Office of Administrative Law.</p>

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Action Item	Staff and Interested Party's Proposed Language
<p>Action 1 — Consent Item(s)</p> <p>Proposed revisions to Regulation 1668, Resale Certificates, other than subdivisions (b)(1)(E) and (b)(3).</p> <ol style="list-style-type: none"> Minor grammatical and reformatting revisions to enhance understanding. Exhibit 3, pages 1 – 11. Clarify that resale certificate remains in effect until revoked in writing. Exhibit 3, page 1. Incorporate the use of XYZ letters into regulation. Exhibit 3, pages 6 – 7. 	<p>(a) EFFECT OF <u>RESALE</u> CERTIFICATE.</p> <p>—(1)—The burden of proving that a sale of tangible personal property is not at retail is upon the seller unless the seller timely takes <u>in good faith</u> a certificate from the purchaser that the property is purchased for resale. If timely taken in <u>proper form as set forth in subdivision (b) and</u> in good faith from a person who is engaged in the business of selling tangible personal property and who holds a California seller's permit <u>as required by Regulation 1699, "Permits,"</u> the certificate relieves the seller from liability for the sales tax and the duty of collecting the use tax. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the property to the purchaser. <u>A resale certificate remains in effect until revoked in writing.</u></p> <p>—(2)— If a purchaser who gives a resale certificate for property makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first stored or used. The use tax must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property is first so stored or used. The purchaser cannot retroactively rescind or revoke the resale certificate and thereby cause the transaction to be subject to sales tax rather than use tax.</p> <p>(b) FORM OF CERTIFICATE.</p> <p>(1) Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a resale certificate with respect to the sale of the property described in the document if it contains all of the following essential elements:</p> <p style="padding-left: 40px;">(A) The signature of the purchaser, <u>purchaser's</u> or an agent or employee, or <u>authorized representative</u> of the purchaser.</p> <p style="padding-left: 40px;">(B) The name and address of the purchaser.</p> <p style="padding-left: 40px;">(C) The number of the seller's permit held by the purchaser, or <u>If the purchaser is not required</u></p>

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	<p>to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this State, an appropriate notation to that effect <u>the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit</u> in lieu of a seller's permit number.</p> <p>(D) A statement that the property described in the document is purchased for resale. The document must contain the phrase "for resale." The use of phrases such as "nontaxable," "exempt," or similar terminology is not acceptable. <u>The property to be purchased under the certificate must be described either by an itemized list of the particular property to be purchased for resale, or by a general description of the kind of property to be purchased for resale.</u></p> <p>[See copy of general resale certificate in strike-out, as illustrated in Exhibit 3, page 2.]</p> <p>(2) A document containing the essential elements described in <u>paragraph (1) above</u> is the minimum form which will be regarded as a resale certificate. However, in order to preclude potential controversy, the seller should timely obtain from the purchaser a certificate substantially in the following form shown in Appendix A of this regulation. <u>If a purchaser operates an auto body repair and/or paint business, a specific resale certificate in substantially the same form as shown in Appendix B of this regulation should be used, rather than the general resale certificate shown in Appendix A.</u></p> <p>[See copy of Appendix A and Appendix B, as illustrated in Exhibit 3, pages 10 – 11.] Under "Description of property to be purchased" there may appear:</p> <p>—(A) Either an itemized list of the particular property to be purchased for resale, or</p> <p>—(B) A general description of the kind of property to be purchased for resale. (A certificate, thus describing the property is good until revoked in writing.)</p> <p>If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the</p>

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	<p>purchaser makes no sales in this State, the purchaser should make an appropriate notation to that effect on the certificate in lieu of a seller's permit number.</p> <p>If the purchaser operates an auto body repair and/or paint business, a specific resale certificate in substantially the same form as it appears below should be used, rather than the general resale certificate shown above:</p> <p>[See copy of specific resale certificate for Auto Body and Paint Industry in strike-out, as illustrated in Exhibit 3, page 4.]</p> <p>(4) If a purchaser wishes to designate on each purchase order <u>whether</u> that the property <u>being purchased</u> is for resale, the seller should obtain a qualified resale certificate, i.e., one that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether the property covered by the order is purchased for resale or whether tax applies to the order. If each purchase order does not so specify, <u>or is not issued timely within the meaning of subdivision (a)</u>, it will be assumed that the property covered by that purchase order was purchased for use, and not for resale. If the purchase order includes both items to be resold and items to be used, the purchase order must specify which items are purchased for resale and which items are purchased for use. For example, a purchase order issued for produced parts for resale and also for tooling used to produce the parts should specify that the parts are purchased for resale and that the sale of the tooling is subject to tax.</p> <p>(5) If the seller does not timely obtain a resale certificate, the fact that the purchaser deletes the tax or tax reimbursement from the seller's billing, provides a seller's permit number to the seller, or informs the seller that the transaction is "not taxable" does not relieve the seller from liability for the tax nor from the burden of proving the sale was for resale.</p> <p>(c) OTHER EVIDENCE TO REBUT PRESUMPTION OF TAXABILITY. A sale for resale is not subject to sales tax. However, a resale certificate which is not timely taken is not retroactive and will not relieve the seller of the liability for the tax. Consequently, if the seller does not timely obtain a resale certificate, the seller will be relieved of liability for the tax only if the seller presents satisfactory evidence that the specific property sold:</p>

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	<p>(1) Was in fact resold by the purchaser and was not used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or</p> <p>—(2) Is being held for resale by the purchaser and has not been used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or</p> <p>—(3) Has been used or consumed by the purchaser and the purchaser has paid the use tax directly to this State.</p> <p><u>(d)(c) GOOD FAITH.</u> <u>In absence of evidence to the contrary, A a seller will be presumed to have taken a resale certificate in good faith if the resale certificate contains the essential elements as described in (b)(1) and otherwise appears to be valid on its face. in the absence of evidence to the contrary.</u> If the purchaser insists that the purchaser is buying for resale property of a kind not normally resold in the purchaser's business, the seller should require a resale certificate containing a statement that the specific property is being purchased for resale in the regular course of business.</p> <p><u>(d) IMPROPER USE OF CERTIFICATE.</u> <u>Except when a resale certificate is issued in accordance with subdivision (h) or (i):</u></p> <p><u>(1) A purchaser, including any officer or employee of a corporation, is guilty of a misdemeanor if the purchaser, for the purpose of evading payment to the seller of tax or tax reimbursement, gives a resale certificate for property which the purchaser knows at the time of purchase will be used rather than resold. The purchaser will also be liable for penalty under section 6072 or 6094.5 for such improper use of a certificate.</u></p> <p><u>(2) Any person, including any officer or employee of a corporation, who gives a resale certificate for property which he or she knows at the time of purchase is not to be resold by him or her or the corporation in the regular course of business is liable to the state for the amount of tax that would be due if he or she had not given such resale certificate. If the person fails to report and pay the use tax due on the use of the property, the person may be liable for the penalty imposed under section 6484</u></p>

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	<p><u>or 6485.</u></p> <p><u>(e) OTHER EVIDENCE TO REBUT PRESUMPTION OF TAXABILITY.</u> A sale for resale is not subject to sales tax. A person who purchases property for resale and who subsequently uses the property owes tax on that use. A resale certificate which is not timely taken is not retroactive and will not relieve the seller of the liability for the tax. Consequently, if the seller does not timely obtain a resale certificate containing the essential elements as described in (b)(1), the seller will be relieved of liability for the tax only where the seller shows that the property:</p> <p style="padding-left: 40px;"><u>(1) Was in fact resold by the purchaser and was not used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or</u></p> <p style="padding-left: 40px;"><u>(2) Is being held for resale by the purchaser and has not been used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or</u></p> <p style="padding-left: 40px;"><u>(3) Was consumed by the purchaser and tax was reported directly to the Board by the purchaser on the purchaser's sales and use tax return, or</u></p> <p style="padding-left: 40px;"><u>(4) Was consumed by the purchaser and tax was paid to the Board by the purchaser pursuant to an assessment against the purchaser developed either on an actual basis or statistical basis.</u></p> <p><u>(f) USE OF XYZ LETTERS.</u> In order to assist a seller in establishing that its sales were, in fact, for resale, the Board authorizes the use of "XYZ letters." XYZ letters are letters in a form approved by the Board which are sent to some or all of the seller's purchasers inquiring as to the purchaser's disposition of the property purchased from the seller. An XYZ letter will include certain information and request responses to certain questions, set forth below. The XYZ letter may also be further customized by agreement between the Board's staff and the seller to reflect the seller's particular circumstances.</p>

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	<p><u>(1) An XYZ letter may include the following information: seller's name and permit number, date of invoice(s), invoice number(s), purchase order number(s), amount of purchase(s), and a description of the property purchased or other identifying information. A copy of the actual invoice(s) may be attached to the XYZ letter. The XYZ letter will request the purchaser to complete the statement and include the purchaser's name, seller's permit number and nature of the purchaser's business. The statement shall be signed by the purchaser, purchaser's employee or authorized representative, and include the printed name of person signing the certificate, title, date, telephone number and city.</u></p> <p><u>(2) An XYZ letter will request that the purchaser, purchaser's employee or authorized representative check one of the boxes provided inquiring as to whether the property in question was:</u></p> <p><u>(A) Purchased for resale and resold in the form of tangible personal property, without any use other than retention, demonstration, or display while being held for sale in the regular course of business;</u></p> <p><u>(B) Purchased for resale and presently in resale inventory, without having been used for any purpose other than retention, demonstration, or display while being held for sale in the regular course of business;</u></p> <p><u>(C) Purchased solely for leasing and was so leased. Tax has been paid directly to the Board measured by the purchase price or rental receipts ("tangible personal property"); or tax has been paid measured by the purchase price or fair rental value ("mobile transportation equipment").</u></p> <p><u>(D) Purchased for resale but consumed or used (whether or not subsequently resold); or</u></p> <p><u>(E) Purchased for use.</u></p> <p><u>(F) When the purchaser answers either (D) or (E) affirmatively (box checked), the XYZ letter will inquire further whether:</u></p> <p><u>1. The tax was paid directly to the Board on the purchaser's Sales and Use Tax Return, and if</u></p>

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	<p><u>so, in what amount;</u></p> <p><u>2. The tax was added to the billing of the seller and remitted to the seller, and if so, in what amount;</u></p> <p><u>3. The tax was paid directly to the Board by the purchaser pursuant to an assessment against the purchaser developed either on an actual basis or statistical basis.</u></p> <p><u>4. The purchaser confirms that the purchase is a taxable transaction and that tax is applicable.</u></p> <p><u>(3) A response to an XYZ letter is not equivalent to a timely and valid resale certificate. A purchaser responding affirmatively to questions reflected in paragraphs (A), (B), (C), or (D) of subdivision (f)(2) will be regarded as confirming the seller's belief that a sale was for resale for purposes of subdivision (g). However, the Board is not required to relieve a seller from liability for sales tax or use tax collection based on a response to an XYZ letter. The Board may, in its discretion, conduct further investigations, including making additional contact with the purchaser or other persons to determine whether the purchase was for resale or for use. When the Board accepts the purchaser's response to an XYZ letter as a valid response, the Board shall relieve the seller of liability for sales tax or use tax collection.</u></p> <p><u>(g) PURCHASER'S LIABILITY FOR TAX.</u> <u>A purchaser who issues a resale certificate containing the essential elements as described in subdivision (b)(1) and that otherwise appears valid on its face, or who otherwise purchases tangible personal property that is accepted by the Board as purchased for resale pursuant to subdivision (f) and who thereafter makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business is liable for use tax on the cost of the property. The tax is due at the time the property is first stored or used and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property is first so stored or used. A purchaser cannot retroactively rescind or revoke a resale certificate and thereby cause the transaction to be subject to sales tax rather than use tax.</u></p>

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	<p><u>A purchaser who issues a resale certificate for property which the purchaser knows at the time of purchase is not to be resold in the regular course of business is liable for the sales tax on that purchase measured by the gross receipts from the sale to that purchaser. The tax is due as of the time the property was sold to the purchaser and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property was sold to the purchaser.</u></p> <p>(eh) MOBILEHOMES. A mobilehome retailer who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, or for installation for occupancy as a residence pursuant to Section 18613 of the Health and Safety Code, and which mobilehome is thereafter subject to property taxation, may issue a resale certificate to the mobilehome vendor even though the retailer is classified as a consumer of the mobilehome by Sections 6012.8 and 6012.9 of the Revenue and Taxation Code. Also, effective September 19, 1985, a mobilehome retailer, licensed as a mobilehome dealer under Section 18002.6 of the Health and Safety Code, who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, may issue a resale certificate to the mobilehome vendor even though the mobilehome retailer may have the mobilehome installed on a foundation system as an improvement to realty prior to the retailer's sale of the mobilehome to the customer for occupancy as a residence.</p> <p>Where the mobilehome is acquired by a mobilehome retailer, who is not licensed as a dealer pursuant to Section 18002.6 of the Health and Safety Code, for affixation by the retailer to a permanent foundation, or for other use or consumption (except demonstration or display while holding for sale in the regular course of business), prior to sale, the mobilehome retailer may not issue a resale certificate. The mobilehome retailer shall notify the vendor that the purchase is for consumption and not for resale. When a mobilehome manufacturer or other vendor is informed or has knowledge that the purchaser will install the mobilehome on a permanent foundation prior to its resale, the manufacturer or other vendor is not making a sale for resale. Such vendor is making a taxable retail sale and cannot accept a resale certificate in good faith.</p> <p>(fi) MOBILE TRANSPORTATION EQUIPMENT. Any person, not exempt from use tax pursuant to Ssection 6352 of the Revenue and Taxation Code, who leases mobile transportation</p>

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	<p>equipment and who is the consumer thereof, may issue a resale certificate to the equipment vendor for the limited purpose of reporting use tax on the fair rental value of the mobile transportation <u>equipment person, other than a person exempt from use tax, such as under Revenue and Taxation Code section 6352, who purchases mobile transportation equipment for the sole purpose of leasing that equipment, may issue a resale certificate for the limited purpose of reporting use tax based on fair rental value as provided in Regulation 1661.</u></p> <p>(g) Improper Use of Certificate. Except when a resale certificate is issued in accordance with the terms of subdivisions (e) or (f):</p> <p>—(1) A purchaser, including any officer or employee of a corporation, is guilty of a misdemeanor if the purchaser gives a resale certificate for property which the purchaser knows at the time of purchase will be used rather than resold. Such improper use of a certificate also may cause the purchaser to become liable for penalties called for by Sections 6072, 6094.5, 6484, or 6485.</p> <p>—(2) Any person, including any officer or employee of a corporation, who gives a resale certificate for property which he or she knows at the time of purchase is not to be resold by him or her or the corporation in the regular course of business is liable to the state for the amount of tax that would be due if he or she had not given such resale certificate.</p>

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Action Item	Language Proposed by Staff	Language Proposed by Interested Party
ACTION 2 – Amend the parenthetical sentence regarding date on resale certificate (b)(1)(E)	(E) Date of execution of document. (An otherwise valid resale certificate <u>received by the seller before January 1, 2002</u> will not be considered invalid solely on the ground that it is undated.)	(E) Date of execution of document. (An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)
ACTION 3 – Responsibility of purchaser who issues a blanket resale certificate and subsequently issues a purchase order indicating that the transaction is taxable. (b)(3)	(3) If a purchaser issues a general (blanket) resale certificate which provides a general description of the items to be purchased, and subsequently issues a purchase order which indicates that the transaction covered by the purchase order is taxable, the resale certificate does not apply with respect to that transaction. However, the purchaser will bear the burden of establishing either that the purchase order was sent to and received by the seller <u>within the seller's billing cycle or prior to delivery of the property to the purchaser (whichever is the later)</u> , or that the tax or tax reimbursement was paid to the seller. The purchaser may avoid this burden by using the procedures described in subsection <u>subdivision</u> (b)(4) below.	<i>[Mr. Golomb is in agreement with the language proposed by staff in subdivision (b)(3); however, requests that additional regulatory language be developed by staff and added to subdivision (b)(3) to specify what type of documentation is required to satisfy the purchaser's burden of establishing that a purchase order was sent to and received by the seller.]</i>

Issue Paper Number 01 - 021



- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services and Administrative Efficiency Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Other

Proposed Regulatory Changes Regarding Application of Tax to Sales for Resale (Assessment Against Purchaser)

I. Issue

Should Regulation 1668, *Resale Certificates*, be amended to clarify the seller's burden of proving that a sale is for resale, and to clarify the purchaser's liability for tax when purchasing under a resale certificate or for resale?

II. Staff Recommendation

Staff recommends amending Regulation 1668, as illustrated in Exhibit 3, to clarify the seller's burden of proving that a sale is for resale, and to clarify the purchaser's liability for tax when purchasing under a resale certificate or for resale. In addition, staff recommends:

Incorporating specific provisions on the use of the Board's confirmation letters (form BOE-504), hereinafter referred to as XYZ letters;

Reformatting the text in the general resale certificate;

Replacing the text "The signature of the purchaser or an agent or employee of the purchaser" in subdivision (b)(1)(A) with "The signature of the purchaser, purchaser's employee or authorized representative;"

Amending the parenthetical sentence in subdivision (b)(1)(E) which states "(An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)" because the date is considered an essential element of a resale certificate (this change would apply only to resale certificates taken by the seller on or after January 1, 2002);

Moving the general resale certificate and the resale certificate for the auto body repair and painting industry to new Appendices A and B respectively and replacing the text "Signature of Purchaser or Authorized Agent" with "Signature of Purchaser, Purchaser's Employee or Authorized Representative" in the signature section of the certificates;

Making minor grammatical and formatting revisions; rearranging some of the current subdivisions within the regulation to enhance understanding; and changing the title of the regulation from "Resale Certificates" to "Sales for Resale."

III. Other Alternative(s) Considered

A. Alternative 1

As proposed by Associated Sales Tax Consultants (ASTC), amend Regulation 1668 as recommended by staff, except do not amend the parenthetical sentence in subdivision (b)(1)(E), "(An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)" Also, develop and incorporate language in subdivision (b)(3) specifying what type of documentation is required to satisfy the purchaser's burden of establishing that a purchase order was sent to and received by the seller.

B. Alternative 2 - Make no changes to Regulation 1668.

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IV. Background

Unsupported sales for resale rank second on the Board's list of most frequent non-compliance errors, surpassed only by purchases made without the payment of use tax from out-of-state vendors. The initial disallowance of a claimed sale for resale is usually the result of the seller's failure to have timely taken a valid resale certificate from the purchaser, or to have other documentation on file that would substantiate the sale as nontaxable.

Application of Tax

The Board has promulgated Regulation 1668, *Resale Certificates*, to implement Revenue and Taxation Code (RTC) sections 6091 and 6241, which presume that all sales are retail sales until the seller proves the contrary. The seller can overcome this presumption by taking from the purchaser a resale certificate as provided in Regulation 1668. A document is regarded as a resale certificate if it contains all the essential elements specified in Regulation 1668. When the seller timely takes a valid resale certificate in good faith, the seller is relieved from liability for sales tax and the duty of collecting use tax. If the purchaser thereafter uses the property rather than reselling it, the Board would look only to the purchaser for payment of any tax due.

When the seller does not timely take a valid resale certificate, the seller will be liable for tax unless the seller proves that the specific property at issue was, in fact, resold, or the property is still being held for resale and the purchaser has not made a taxable use of it, or the purchaser has paid the tax to the state based on the purchaser's use of that property. (Current Regulation 1668(c).)

Purchaser's Liability for Use Tax

The applicable tax when a sale of tangible personal property occurs outside California for use in this state is use tax. Although a retailer engaged in business in California must collect that use tax and remit it to the Board, the use tax is imposed on the purchaser. Thus, when the purchaser makes a purchase of tangible personal property outside California without the payment of tax or tax reimbursement on the purchase price, and makes a use of the property in this state before selling it, the purchaser is liable for any use tax due without regard to whether the purchaser issued a resale certificate to the seller. If the sale occurs inside California, then the applicable tax is usually sales tax, which is imposed on the seller. However, if the purchaser avoids paying sales tax reimbursement to the seller by issuing a resale certificate and thereafter uses the property, the applicable tax is use tax, which the purchaser owes. This is explained in current subdivision (a)(2) of Regulation 1668:

“If a purchaser who gives a resale certificate for property makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first stored or used. The use tax must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property is first so stored or used. The purchaser cannot retroactively rescind or revoke the resale certificate and thereby cause the transaction to be subject to sales tax rather than use tax.”

The circumstances requiring clarification in the regulation arise when a purchaser purchases tangible personal property from a seller inside California without issuing the seller a *valid* resale certificate and thereafter uses that property. The applicable tax in these circumstances is usually sales tax owed by the

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seller unless there is a basis for shifting that tax liability to the purchaser. The basis for doing so is provided by RTC section 6244(a) and incorporated into proposed subdivision (g) of Regulation 1668. Section 6244(a) states:

“If a purchaser who gives a resale certificate **or purchases property for the purpose of reselling it** makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first so stored or used.” (Emphasis added)

Under this provision, even if the purchaser of property in California does not issue the seller a resale certificate, the purchaser is liable for use tax on the use of the property if the seller presents satisfactory evidence that the specific property was, in fact, purchased for resale by the purchaser.

XYZ Letters

When the records of the seller do not establish that the sales at issue were for resale, the Board authorizes the use of confirmation (XYZ) letters, as appropriate, to assist the seller in substantiating that a sale was not at retail or to substantiate a seller’s claim that the purchaser paid use tax directly to the state. The auditor will provide the seller with a copy of forms BOE-504-A (Use of XYZ Letter Procedure to Verify Claimed Sales for Resale), BOE-504-B (Sample Cover Letter), and BOE-504-C (Statement Concerning Property Purchased Without Payment of California Sales Tax). (See Exhibit 4.)

The Board also provides standardized XYZ letters for confirmation of unique sales: (1) BOE-504-COS, for use when auditing out-of-state sellers, (2) BOE-504-CLS, for use when questioning sales made to leasing companies, (3) BOE-504-CPA, for use when questioning sales of special printing aids, (4) BOE-504-CFS, for use when questioning sales of feed, fertilizer, seed or annual plants, and (5) BOE-504-CUS, for use when questioning sales made to U.S. Government supply contractors.

The procedures for the use of XYZ letters are contained in the Board’s Audit Manual Chapter 4, last revised in January 2000; however, a description of the purpose and use of XYZ letters does not currently appear in a regulation.

With respect to Regulation 1668, meetings were held with interested parties on April 5, 2001 and May 24, 2001. Numerous representatives were in attendance at the meetings. Subsequent to the second interested parties meeting, interested party submissions were received from: Mr. Abe Golomb representing Associated Sales Tax Consultants Inc. (ASTC), Mr. Kai Mickey representing Premier Sales & Use Tax Consulting, and Mr. John Schneider representing Coca Cola Enterprises Bottling Companies. Staff has incorporated the suggestions received from Mr. Mickey and Mr. Schneider. Staff has also incorporated the suggestions received from Mr. Golomb with the exception of two issues. Mr. Golomb recommends that we do not amend the parenthetical sentence in subdivision (b)(1)(E) which states “(An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated).” Further, Mr. Golomb recommends that staff develop and incorporate language into subdivision (b)(3), which would specify what type of documentation the purchaser must provide to satisfy the purchaser’s burden of establishing that a purchase order was sent to and received by the seller.

Issue Paper Number 01 - 021

V. Staff Recommendation

A. Description of the Staff Recommendation

Staff recommends amending Regulation 1668, *Resale Certificates*, as illustrated in Exhibit 3, to clarify the seller's burden of proving that a sale is for resale, and to clarify the purchaser's liability for tax when purchasing under a resale certificate or for resale. In the absence of evidence to the contrary, a seller will be presumed to have taken a resale certificate in good faith if the resale certificate contains the essential elements as described in Regulation 1668 subdivision (b)(1) and otherwise appears to be a valid resale certificate.

A purchaser who issues a resale certificate containing the essential elements as described in subdivision (b)(1) and that otherwise appears valid on its face, or who otherwise purchases tangible personal property that is accepted by the Board as purchased for resale pursuant to subdivision (f) and who thereafter makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business is liable for use tax on the cost of the property. Also, a purchaser who issues a resale certificate for property which the purchaser knows at the time of purchase is not to be resold in the regular course of business is liable for the sales tax on that purchase, measured by the gross receipts from the sale to that purchaser.

Although included in Audit Manual Chapter 4, the specific provisions on the use of the Board's XYZ letters do not appear in a regulation. Thus, staff recommends incorporating such provisions into Regulation 1668.

Staff recommends amending the parenthetical sentence in subdivision (b)(1)(E) which states "(An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)" The date is considered an essential element of a resale certificate. Mr. Golomb contends that deletion of this sentence creates retroactive tax liability for taxpayers in violation of the United States and California Constitutions. (See Alternative 1.) Although staff disagrees with Mr. Golomb's constitutional concerns, it does agree that as long as a resale certificate was valid when taken under the existing provisions of Regulation 1668, it should remain valid after the requirement for the date is made mandatory. Staff has therefore recommended changes to address this concern. An undated resale certificate that is otherwise valid and that the seller establishes was taken prior to January 1, 2002 will remain valid.

Staff recommends reformatting the text in the general resale certificate, as well as moving the general resale certificate and the specific resale certificate for the auto body and paint industry to an Appendices as illustrated in Exhibit 2, Appendix A and Appendix B. Staff also recommends changing the text of the signature line to state: "Signature of Purchaser, Purchaser's Employee or Authorized Representative."

In addition, staff recommends minor grammatical and formatting revisions, as well as rearrangement of some of the current subdivisions within the regulation. Staff also recommends changing the title of the regulation from "Resale Certificates" to "Sales for Resale."

Issue Paper Number 01 - 021

B. Pros of the Staff Recommendation

The proposed amendments to the regulation help clarify the seller's burden of proving that a sale is for resale and reiterates the importance of timely taking a valid resale certificate.

The proposed amendments to the regulation clarify the purchaser's liability for tax when purchasing under a resale certificate or for resale.

The date is an essential element of a resale certificate. Amending the parenthetical sentence in subdivision (b)(1)(E) emphasizes the importance of a dated certificate. An undated certificate does not eliminate any doubt as to when the certificate was issued and for which transaction it applies. Making this change effective on January 1, 2002 (with the seller having to show that an undated resale certificate was received prior to this date) eliminates any possible concern regarding retroactive application.

Incorporating the specific provisions on the use of the Board's XYZ letters will notify taxpayers of an alternative means of assisting the seller in substantiating that a sale was not at retail or to substantiate a seller's claim that the purchaser paid use tax directly to the state.

Reformatting the text in the general resale certificate will make it easier to understand and to properly complete.

Replacing the text on resale certificates and XYZ letters with "Signature of Purchaser, Purchaser's Employee or Authorized Representative," will provide for consistency between forms and also stipulate the appropriate person signing the certificate or form.

Moving the general resale certificate and the specific resale certificate for the auto body repair and painting industry to Appendices A and B, respectively, will allow for easier duplication and identification of the certificates.

Making minor grammatical and formatting revisions, as well as rearranging some of the current subdivisions within the regulation, will improve clarity and enhance understanding of the regulation.

Changing the name of the regulation from *Resale Certificates* to *Sales for Resale* will properly identify the content of the regulation.

C. Cons of the Staff Recommendation

Requires regulatory change.

Taxpayers will be required to ensure that the resale certificate is dated.

D. Statutory or Regulatory Change

No statutory changes required. However, the proposed changes require an amendment to Regulation 1668.

Issue Paper Number 01 - 021

E. Administrative Impact

The proposed amendments to Regulation 1668 do not change the current interpretation of statute. However, staff will notify all taxpayers of the amendment to Regulation 1668 through a Special Notice.

Staff will be directed to inform taxpayers of the resale certificate requirements, emphasizing that all the essential elements need to be present.

F. Fiscal Impact

1. Cost Impact

In order to provide notice to the taxpayers with regard to the date requirement on resale certificates as of January 1, 2002, a special notice will be mailed to all taxpayers once the amendments to the regulation are approved by the Office of Administrative Law. The estimated cost of each special notice is as follows:

Printing:

827,000 pages front to back @ .01 per page = \$ 8,270.00

Envelopes:

827,000 E-18 window envelopes @ .02 per envelope = 16,540.00

Postage:

827,000 @ .17 bulk presorted = 140,590.00

Total Estimated Cost for Each Special Notice Mailing \$165,400.00

2. Revenue Impact

None. See Revenue Estimate, Exhibit 1.

G. Taxpayer/Customer Impact

Proposed amendments to Regulation 1668 will affect most industries doing business in California. However, the amendments are not changes in the current statutory interpretations found in Regulation 1668, but serve only to clarify the seller's burden of proving that a sale is for resale and to clarify the purchaser's liability for tax when purchasing under a resale certificate or for resale.

Incorporating the specific provisions on the use of the Board's XYZ letters will assist the taxpayers in substantiating that a sale was for resale or the purchaser has paid the tax directly to the Board, thus lessening the potential for an erroneous assessment against the taxpayer.

H. Critical Time Frames

Implementation will take place 30 days following approval of the regulation by the Office of Administrative Law. Subdivision (b)(1)(E) will be operative January 1, 2002.

Issue Paper Number 01 - 021

VI. Alternative 1

A. Description of the Alternative

As proposed by Mr. Abe Golomb, amend Regulation 1668, *Resale Certificates*, as proposed by staff with the exception of subdivision (b)(1)(E) and (b)(3). The parenthetical sentence in (b)(1)(E), which states “(An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)” should not be amended in Regulation 1668.

Presently, an otherwise valid resale certificate is not considered invalid solely on the grounds that it is undated. Mr. Golomb has contended that the staff’s suggested change will make the date a mandatory element so that all resale certificates containing the other essential elements listed in section (b)(1), but without dates, invalid and will automatically create retroactive tax liability for taxpayers, which is in violation of the United States and California Constitutions. Also, Mr. Golomb notes that undated resale certificates have previously been accepted as valid in audits by the Board staff and he believes that this change would thus create Section 6596 (misinformation) arguments for taxpayers.

In addition, Mr. Golomb requests that staff develop and incorporate language into subdivision (b)(3), which would specify what type of documentation is required to satisfy the purchaser’s burden of establishing that a purchase order was sent to and received by the seller.

B. Pros of the Alternative

All Pros of staff recommendation are incorporated herein and applicable to Alternative 1, with the exception of amending the parenthetical sentence in subdivision (b)(1)(E), which requires the resale certificate to be dated.

Taxpayers will not bear an additional burden of establishing that an undated resale certificate was received prior to January 1, 2002 or, for undated resale certificates received after that date, substantiating that a sale was a valid sale for resale.

The type of documentation required to satisfy the purchaser’s burden of establishing that a purchase order was sent to and received by the seller would be specified in the regulation.

C. Cons of the Alternative

An undated certificate does not eliminate any doubt as to when the certificate was issued and for which transactions it applies. An undated certificate is subject to dispute between the purchaser and the seller as to whether it applies to a particular sale, and does not provide the information that the regulation already states is an essential element. The alternative is not required to avoid possible retroactive application of tax because the change will apply only with respect to resale certificates taken on or after January 1, 2002. The alternative is not required to avoid misinformation arguments by taxpayers because the change is by regulation (and taxpayers will be well notified of the change).

Specifying in the regulation the type of documentation that would be required and/or accepted by the Board to satisfy the purchaser’s burden of establishing that a purchase order was sent to

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and received by the seller would be restrictive and not allow for other documentation presented by the purchaser.

D. Statutory or Regulatory Change

No statutory change required. However, the proposed changes require an amendment to Regulation 1668.

E. Administrative Impact

The proposed amendments to Regulation 1668 do not change the current interpretation of statute. However, staff will notify all taxpayers of the amendment to Regulation 1668 through a Special Notice and a written article in the Tax Information Bulletin.

F. Fiscal Impact**1. Cost Impact**

Taxpayers will be notified of the amendments to the regulation with a written article in a Tax Information Bulletin.

Printing and mailing: The costs associated with the distribution of a Tax Information Bulletin, which are routinely prepared and distributed to taxpayers, are accommodated within the Board's existing budget.

Labor: No additional costs will be incurred for notifying taxpayers and processing the regulatory changes, since this is considered a part of the routine workload for the Policy Development Section (SUTD Program Planning Division), Customer and Taxpayer Services Division, Legal Division, Board Proceedings Division and Mail Services Unit.

2. Revenue Impact

None. See Revenue Estimate, Exhibit 1.

G. Taxpayer/Customer Impact

Considering an undated resale certificate as a valid resale certificate will continue to allow for a misunderstanding of the proper acceptance and issuance of resale certificates, to the detriment of the taxpayer.

Additional regulatory language in subdivision (b)(3) may cause restriction on the type of documentation accepted, to the detriment of the taxpayer.

H. Critical Time Frames

None. Implementation will take place 30 days following approval of the regulation by the Office of Administrative Law.

VII. Alternative 2**A. Description of the Alternative**

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Do not amend Regulation 1668, *Resale Certificates*.

B. Pros of the Alternative

Does not require regulatory change.

C. Cons of the Alternative

Fails to provide guidance for industries on the proper issuance and acceptance of resale certificates.

Fails to provide information on the appropriate use of the Board's XYZ letters.

Fails to clarify the purchaser's liability for tax when purchasing under a resale certificate or for resale.

D. Statutory or Regulatory Change

No statutory or regulatory change required.

E. Administrative Impact

None.

F. Fiscal Impact

1. Cost Impact

None.

2. Revenue Impact

None. See Revenue Estimate, Exhibit 1.

G. Taxpayer/Customer Impact

Will continue to allow for a misunderstanding of the proper acceptance and issuance of resale certificates, to the detriment of the taxpayer.

The purchaser's liability for tax will not be clarified in the regulation.

No provision for the use of XYZ letters will be incorporated into regulatory language. Thus, the taxpayers may not be aware that the use of these letters may substantiate that a sale was not at retail.

H. Critical Time Frames

None.

Prepared by: Program Planning Division, Sales and Use Tax Department

Current as of: July 20, 2001

REVENUE ESTIMATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATION



**PROPOSED REGULATORY CHANGES REGARDING
APPLICATION OF TAX TO SALES FOR RESALE
(ASSESSMENT AGAINST PURCHASER)**

Staff Recommendation

Staff recommends amending Regulation 1668, as illustrated in Exhibit 3 of the issue paper, to clarify the seller's burden of proving that a sale is for resale, and to clarify the purchaser's liability for tax when purchasing under a resale certificate or for resale. In addition, staff recommends:

Incorporating specific provisions on the use of the Board's confirmation letters (form BOE-504), hereinafter referred to as XYZ letters;

Reformatting the text in the general resale certificate;

Replacing the text "The signature of the purchaser or an agent or employee of the purchaser" in subdivision (b)(1)(A) with "The signature of the purchaser, purchaser's employee or authorized representative;"

Amending the parenthetical sentence in subdivision (b)(1)(E) which states "(An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)." The date is considered an essential element of a resale certificate;

Moving the general resale certificate and the resale certificate for the auto body repair and painting industry to new Appendices A and B respectively and replacing the text "Signature of Purchaser or Authorized Agent" with "Signature of Purchaser, Purchaser's Employee or Authorized Representative" in the signature section of the certificates;

Making minor grammatical and formatting revisions; rearranging some of the current subdivisions within the regulation to enhance understanding; and changing the title of the regulation from "Resale Certificates" to "Sales for Resale."

Alternative 1

As proposed by Associated Sales Tax Consultants (ASTC), amend Regulation 1668 as recommended by staff, except do not amend the parenthetical sentence in subdivision (b)(1)(E), "(An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)." Also, develop and incorporate language in subdivision (b)(3) specifying what type of documentation is required to satisfy the purchaser's burden of establishing that a purchase order was sent to and received by the seller.

Alternative 2

Make no changes to Regulation 1668

Background, Methodology, and Assumptions

Staff Recommendation:

There is nothing in the proposed amendments to Regulation 1668 that would impact revenues.

Alternative 1:

Alternative 1 has no revenue effect.

Alternative 2:

Alternative 2 has no revenue effect.

Revenue Summary

The staff recommendation has no revenue effect.

The alternative proposals have no revenue effect.

Preparation

This revenue estimate was prepared by David E. Hayes, Research and Statistics Section, Agency Planning and Research Division. This revenue estimate was reviewed by Ms. Laurie Frost, Chief, Agency Planning and Research Division and Ms. Charlotte Paliani, Program Planning Manager, Sales and Use Tax Department. For additional information, please contact Mr. Hayes at (916) 445-0840.

Current as of July 19, 2001

**Proposed Regulatory Changes Regarding Application of Tax to Sales for Resale
Regulation 1668, Resale Certificates**

Comparison of Current and Proposed Language

Current as of July 19, 2001

Action Item	Current Regulatory Language	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Interested Party	Summary Comments
ACTION 2 — Amend the parenthetical sentence regarding date on resale certificate.	Regulation 1668(b)(1) (E) Date of execution of document. (An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)	Regulation 1668(b)(1) (E) Date of execution of document. (An otherwise valid resale certificate <u>received by the seller before January 1, 2002</u> will not be considered invalid solely on the ground that it is undated.)	Regulation 1668(b)(1) (E) Date of execution of document. (An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)	<p>Mr. Golomb states that presently an otherwise valid resale certificate is not considered invalid solely on the grounds that it is undated. Mr. Golomb contends that staff's suggested change will make the date a mandatory element so that all resale certificates containing the other essential elements listed in section (b)(1), but without dates, invalid and will automatically create retroactive tax liability for taxpayers, which is in violation of the United States and California Constitution.</p> <p>Staff contends the date is an essential element. An undated certificate does not eliminate any doubt as to when the certificate was issued and for which transaction it applies. Making this change effective</p>

Proposed Regulatory Changes Regarding Application of Tax to Sales for Resale
Regulation 1668, Resale Certificates
Comparison of Current and Proposed Language

Current as of July 19, 2001

Action Item	Current Regulatory Language	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Interested Party	Summary Comments
				January 1, 2002 eliminates any possible concern regarding retroactive application.
ACTION 3 — Responsibility of purchaser who issues a blanket resale certificate and subsequently issues a purchase order indicating that the transaction is taxable.	Regulation 1668(b) (3) If a purchaser issues a general (blanket) resale certificate which provides a general description of the items to be purchased, and subsequently issues a purchase order which indicates that the transaction covered by the purchase order is taxable, the resale certificate does not apply with respect to that transaction. However, the purchaser will bear the burden of establishing either that the purchase order was sent to and received by the seller or that the tax or tax reimbursement was paid to the seller. The purchaser may avoid this burden by using the procedures described in subsection (b)(4) below.	Regulation 1668(b) (3) If a purchaser issues a general (blanket) resale certificate which provides a general description of the items to be purchased, and subsequently issues a purchase order which indicates that the transaction covered by the purchase order is taxable, the resale certificate does not apply with respect to that transaction. However, the purchaser will bear the burden of establishing either that the purchase order was sent to and received by the seller <u>within the seller's billing cycle or prior to delivery of the property to the purchaser (whichever is the later)</u> , or that the tax or tax reimbursement was paid to the seller. The purchaser may avoid this burden by using the procedures	Regulation 1668(b) (3) If a purchaser issues a general (blanket) resale certificate which provides a general description of the items to be purchased, and subsequently issues a purchase order which indicates that the transaction covered by the purchase order is taxable, the resale certificate does not apply with respect to that transaction. However, the purchaser will bear the burden of establishing either that the purchase order was sent to and received by the seller <u>within the seller's billing cycle or prior to delivery of the property to the purchaser (whichever is the later)</u> , or that the tax or tax reimbursement was paid to the seller. The purchaser may avoid this burden by using the procedures	Mr. Golomb has not submitted alternate language; however, he requests that staff develop and incorporate language in the regulation that would specify the type of documentation required to satisfy the purchaser's burden of establishing that a purchase order was sent to and received by the seller. Staff contends the documentation could be varied depending upon the purchaser and to incorporate language into the regulation would be limiting and restricting the type of documentation that might be available.

Proposed Regulatory Changes Regarding Application of Tax to Sales for Resale Regulation 1668, Resale Certificates Comparison of Current and Proposed Language

Current as of July 19, 2001

Action Item	Current Regulatory Language	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Interested Party	Summary Comments
		described in subsection <u>subdivision</u> (b)(4) below.	described in subsection <u>subdivision</u> (b)(4) below.	

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Comparison.dot rev. 7-27-00

Regulation 1668. ~~RESALE CERTIFICATE~~SALES FOR RESALE**(a) ~~EFFECT OF~~ RESALE CERTIFICATE.**

~~(1)~~—The burden of proving that a sale of tangible personal property is not at retail is upon the seller unless the seller timely takes in good faith a certificate from the purchaser that the property is purchased for resale. If timely taken in proper form as set forth in subdivision (b) and in good faith from a person who is engaged in the business of selling tangible personal property and who holds a California seller's permit as required by Regulation 1699, "Permits," the certificate relieves the seller from liability for the sales tax and the duty of collecting the use tax. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the property to the purchaser. A resale certificate remains in effect until revoked in writing.

~~(2) If a purchaser who gives a resale certificate for property makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first stored or used. The use tax must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property is first so stored or used. The purchaser cannot retroactively rescind or revoke the resale certificate and thereby cause the transaction to be subject to sales tax rather than use tax.~~

(b) FORM OF CERTIFICATE.

(1) Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a resale certificate with respect to the sale of the property described in the document if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's or an agent or employee, or authorized representative of the purchaser.

(B) The name and address of the purchaser.

(C) The number of the seller's permit held by the purchaser, ~~or~~ If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this State, an appropriate notation to that effect the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement that the property described in the document is purchased for resale. The document must contain the phrase "for resale." The use of phrases such as "nontaxable," "exempt," or similar terminology is not acceptable. The property to be purchased under the certificate must be described either by an itemized list of the particular property to be purchased for resale, or by a general description of the kind of property to be purchased for resale.

(E) Date of execution of document. (An otherwise valid resale certificate received by the seller before January 1, 2002 will not be considered invalid solely on the ground that it is undated.)

(2) A document containing the essential elements described in paragraph (1) above is the minimum form which will be regarded as a resale certificate. However, in order to preclude potential controversy, the

Regulation 1668
Resale Certificates

JLT: 7/19/01

seller should timely obtain from the purchaser a certificate substantially in the ~~following form shown in Appendix A of this regulation.~~ If a purchaser operates an auto body repair and/or paint business, a specific resale certificate in substantially the same form as shown in Appendix B of this regulation should be used, rather than the general resale certificate shown in Appendix A.

California Resale Certificate

(Name of Purchaser)	

(Address of Purchaser)	
I HEREBY CERTIFY: That I hold valid seller's permit No. _____ issued pursuant to the Sales and Use Tax Law; That I am engaged in the business of selling _____;	
that the tangible personal property described herein which I shall purchase from: _____	
will be resold by me in the form of tangible personal property, provided, however, that in the event any of such property is used for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, it is understood that I am required by the Sales and Use Tax Law to report and pay tax, measured by the purchase price of such property or other authorized amount.	
Description of property to be purchased: _____	
<p>For Your Information: A person may be guilty of a misdemeanor under Revenue and Taxation Code section 6094.5 if the purchaser knows at the time of purchase that he or she will not resell the purchased item prior to any use (other than retention, demonstration, or display while holding it for resale) and he or she furnishes a resale certificate to avoid payment to the seller of an amount as tax. Additionally, a person misusing a resale certificate for personal gain or to evade the payment of tax is liable, for each purchase, for the tax that would have been due, plus penalty of 10 percent of the tax or \$500, whichever is more.</p>	
Date: _____ 19 20	_____
	(Signature of Purchaser or Authorized Agent)

	(Title)

	Telephone _____

Under "Description of property to be purchased" there may appear:

- (A) Either an itemized list of the particular property to be purchased for resale, or
- (B) A general description of the kind of property to be purchased for resale. (A certificate, thus describing the property is good until revoked in writing.)

If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this State, the purchaser should make an appropriate notation to that effect on the certificate in lieu of a seller's permit number.

Regulation 1668
Resale Certificates

~~If the purchaser operates an auto body repair and/or paint business, a specific resale certificate in substantially the same form as it appears below should be used, rather than the general resale certificate shown above:~~

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Regulation 1668

Resale Certificate.

California Resale Certificate
for the Auto Body Repair and Painting Industry

I HEREBY CERTIFY:

1. I hold valid California seller's permit no. _____.
2. I am engaged in the business of selling the following type of property: _____.
3. This certificate is for the purchase from _____ of the item(s) I have **initialed** in paragraph 5 below. _____ [Vendor's name]
4. I will resell the following item(s) I am purchasing under this resale certificate in the form of tangible personal property in the regular course of my business operations, and I will do so prior to making any use of the item(s) other than demonstration and display while holding the item(s) for sale in the regular course of my business. I understand that if I use the item(s) purchased under this certificate in any manner other than as just described, **I will owe use tax** based on each item's purchase price or as otherwise provided by law.
5. I am purchasing for resale under this resale certificate the item(s) indicated by my **initials** below (**not** an X or similar mark):

_____ Automobile parts	_____ Fisheye eliminator	_____ Polishes/Wax	_____ Sealers
_____ Clear Coats	_____ Glues / Adhesives	_____ Primers	
_____ Electrical Tape	_____ Hardeners	_____ Putties	
_____ Fillers	_____ Paints	_____ Rust Protectors	
_____ Other (specify items) _____			

6. I have read and understand the following:

Note: Auto body repair and paint shops are generally considered consumers of the items listed below regardless of the manner in which they bill their customers for repairs and painting. Thus, this certificate generally may **not** be used to purchase these items. If a person does, in fact, resell any of the following items prior to use, the person may take a deduction on his or her sales and use tax return to offset the amount paid as tax (the deduction is taken under "Tax paid purchases resold"). If, however, a person is purchasing one of these items exclusively for resale in the form of tangible personal property and not for consumption during repairs, painting, or the like, this certificate may be used to purchase such item by listing it under "Other" above.

Abrasives	Equipment repair parts	Masks	Reducers
Books	Goggles	Metal conditioners	Respirators
Cans	Hand cleaners	Paint remover	Rubbing compounds
Cleaning solvent	Manuals	Plastic bottles	Rubbing machines
Color charts	Masking paper	Polishing compounds	Thinners
Equipment	Masking tape	Polishing machines	Touch-up bottles

7. I have read and understand the following:

For Your Information: A person may be guilty of a misdemeanor under Revenue and Taxation Code section 6094.5 if the purchaser knows at the time of purchase that he or she will not resell the purchased item prior to any use (other than retention, demonstration, or display while holding it for resale) and he or she furnishes a resale certificate to avoid payment to the seller of an amount as tax. Additionally, a person misusing a resale certificate for personal gain or to evade the payment of tax is liable, for each purchase, for the tax that would have been due, plus a penalty of 10 percent of the tax or \$500, whichever is more.

Name of Purchaser

Signature of Purchaser or Authorized Agent

Title

Address of Purchaser

Telephone

Date _____ 20 _____ }

Regulation 1668

Resale Certificate.

(3) If a purchaser issues a general (blanket) resale certificate which provides a general description of the items to be purchased, and subsequently issues a purchase order which indicates that the transaction covered by the purchase order is taxable, the resale certificate does not apply with respect to that transaction. However, the purchaser will bear the burden of establishing either that the purchase order was sent to and received by the seller within the seller's billing cycle or prior to delivery of the property to the purchaser (whichever is the later), or that the tax or tax reimbursement was paid to the seller. The purchaser may avoid this burden by using the procedures described in ~~subsection~~ subdivision (b)(4) below.

(4) If a purchaser wishes to designate on each purchase order whether that the property being purchased is for resale, the seller should obtain a qualified resale certificate, i.e., one that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether the property covered by the order is purchased for resale or whether tax applies to the order. If each purchase order does not so specify, or is not issued timely within the meaning of subdivision (a), it will be assumed that the property covered by that purchase order was purchased for use, and not for resale. If the purchase order includes both items to be resold and items to be used, the purchase order must specify which items are purchased for resale and which items are purchased for use. For example, a purchase order issued for produced parts for resale and also for tooling used to produce the parts should specify that the parts are purchased for resale and that the sale of the tooling is subject to tax.

(5) If the seller does not timely obtain a resale certificate, the fact that the purchaser deletes the tax or tax reimbursement from the seller's billing, provides a seller's permit number to the seller, or informs the seller that the transaction is "not taxable" does not relieve the seller from liability for the tax nor from the burden of proving the sale was for resale.

~~(c) OTHER EVIDENCE TO REBUT PRESUMPTION OF TAXABILITY. A sale for resale is not subject to sales tax. However, a resale certificate which is not timely taken is not retroactive and will not relieve the seller of the liability for the tax. Consequently, if the seller does not timely obtain a resale certificate, the seller will be relieved of liability for the tax only if the seller presents satisfactory evidence that the specific property sold:~~

~~—(1) Was in fact resold by the purchaser and was not used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or~~

~~—(2) Is being held for resale by the purchaser and has not been used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or~~

~~—(3) Has been used or consumed by the purchaser and the purchaser has paid the use tax directly to this State.~~

~~(d)~~(c) **GOOD FAITH.** In absence of evidence to the contrary, A a seller will be presumed to have taken a resale certificate in good faith if the resale certificate contains the essential elements as described in (b)(1) and otherwise appears to be valid on its face. ~~in the absence of evidence to the contrary.~~ If the purchaser insists that the purchaser is buying for resale property of a kind not normally resold in the purchaser's business, the seller should require a resale certificate containing a statement that the specific property is being purchased for resale in the regular course of business.

Regulation 1668

Resale Certificate.

(d) IMPROPER USE OF CERTIFICATE. Except when a resale certificate is issued in accordance with subdivision (h) or (i):

(1) A purchaser, including any officer or employee of a corporation, is guilty of a misdemeanor if the purchaser, for the purpose of evading payment to the seller of tax or tax reimbursement, gives a resale certificate for property which the purchaser knows at the time of purchase will be used rather than resold. The purchaser will also be liable for penalty under section 6072 or 6094.5 for such improper use of a certificate.

(2) Any person, including any officer or employee of a corporation, who gives a resale certificate for property which he or she knows at the time of purchase is not to be resold by him or her or the corporation in the regular course of business is liable to the state for the amount of tax that would be due if he or she had not given such resale certificate. If the person fails to report and pay the use tax due on the use of the property, the person may be liable for the penalty imposed under section 6484 or 6485.

(e) OTHER EVIDENCE TO REBUT PRESUMPTION OF TAXABILITY. A sale for resale is not subject to sales tax. A person who purchases property for resale and who subsequently uses the property owes tax on that use. A resale certificate which is not timely taken is not retroactive and will not relieve the seller of the liability for the tax. Consequently, if the seller does not timely obtain a resale certificate containing the essential elements as described in (b)(1), the seller will be relieved of liability for the tax only where the seller shows that the property:

(1) Was in fact resold by the purchaser and was not used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(2) Is being held for resale by the purchaser and has not been used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(3) Was consumed by the purchaser and tax was reported directly to the Board by the purchaser on the purchaser's sales and use tax return, or

(4) Was consumed by the purchaser and tax was paid to the Board by the purchaser pursuant to an assessment against the purchaser developed either on an actual basis or statistical basis.

(f) USE OF XYZ LETTERS. In order to assist a seller in establishing that its sales were, in fact, for resale, the Board authorizes the use of "XYZ letters." XYZ letters are letters in a form approved by the Board which are sent to some or all of the seller's purchasers inquiring as to the purchaser's disposition of the property purchased from the seller. An XYZ letter will include certain information and request responses to certain questions, set forth below. The XYZ letter may also be further customized by agreement between the Board's staff and the seller to reflect the seller's particular circumstances.

(1) An XYZ letter may include the following information: seller's name and permit number, date of invoice(s), invoice number(s), purchase order number(s), amount of purchase(s), and a description of the property purchased or other identifying information. A copy of the actual invoice(s) may be attached to the XYZ letter. The XYZ letter will request the purchaser to complete the statement and include the purchaser's name, seller's permit number and nature of the purchaser's business. The statement shall be signed by the purchaser, purchaser's employee or authorized representative, and include the printed name of person signing the certificate, title, date, telephone number and city.

(2) An XYZ letter will request that the purchaser, purchaser's employee or authorized representative check one of the boxes provided inquiring as to whether the property in question was:

(A) Purchased for resale and resold in the form of tangible personal property, without any use other than retention, demonstration, or display while being held for sale in the regular course of business;

(B) Purchased for resale and presently in resale inventory, without having been used for any purpose other than retention, demonstration, or display while being held for sale in the regular course of business;

(C) Purchased solely for leasing and was so leased. Tax has been paid directly to the Board measured by the purchase price or rental receipts ("tangible personal property"); or tax has been paid measured by the purchase price or fair rental value ("mobile transportation equipment").

(D) Purchased for resale but consumed or used (whether or not subsequently resold); or

(E) Purchased for use.

(F) When the purchaser answers either (D) or (E) affirmatively (box checked), the XYZ letter will inquire further whether:

1. The tax was paid directly to the Board on the purchaser's Sales and Use Tax Return, and if so, in what amount;

2. The tax was added to the billing of the seller and remitted to the seller, and if so, in what amount;

3. The tax was paid directly to the Board by the purchaser pursuant to an assessment against the purchaser developed either on an actual basis or statistical basis.

4. The purchaser confirms that the purchase is a taxable transaction and that tax is applicable.

(3) A response to an XYZ letter is not equivalent to a timely and valid resale certificate. A purchaser responding affirmatively to questions reflected in paragraphs (A), (B), (C), or (D) of subdivision (f)(2) will be regarded as confirming the seller's belief that a sale was for resale for purposes of subdivision (g). However, the Board is not required to relieve a seller from liability for sales tax or use tax collection based on a response to an XYZ letter. The Board may, in its discretion, conduct further investigations, including making additional contact with the purchaser or other persons to determine whether the purchase was for resale or for use. When the Board accepts the purchaser's response to an XYZ letter as a valid response, the Board shall relieve the seller of liability for sales tax or use tax collection.

(g) PURCHASER'S LIABILITY FOR TAX. A purchaser who issues a resale certificate containing the essential elements as described in subdivision (b)(1) and that otherwise appears valid on its face, or who otherwise purchases tangible personal property that is accepted by the Board as purchased for resale pursuant to subdivision (f) and who thereafter makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business is liable for use tax on the cost of the property. The tax is due at the time the property is first stored or used and must

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Resale Certificate.

be reported and paid by the purchaser with the purchaser's tax return for the period in which the property is first so stored or used. A purchaser cannot retroactively rescind or revoke a resale certificate and thereby cause the transaction to be subject to sales tax rather than use tax.

A purchaser who issues a resale certificate for property which the purchaser knows at the time of purchase is not to be resold in the regular course of business is liable for the sales tax on that purchase measured by the gross receipts from the sale to that purchaser. The tax is due as of the time the property was sold to the purchaser and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property was sold to the purchaser.

(eh) MOBILEHOMES. A mobilehome retailer who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, or for installation for occupancy as a residence pursuant to Section 18613 of the Health and Safety Code, and which mobilehome is thereafter subject to property taxation, may issue a resale certificate to the mobilehome vendor even though the retailer is classified as a consumer of the mobilehome by Sections 6012.8 and 6012.9 of the Revenue and Taxation Code. Also, effective September 19, 1985, a mobilehome retailer, licensed as a mobilehome dealer under Section 18002.6 of the Health and Safety Code, who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, may issue a resale certificate to the mobilehome vendor even though the mobilehome retailer may have the mobilehome installed on a foundation system as an improvement to realty prior to the retailer's sale of the mobilehome to the customer for occupancy as a residence.

Where the mobilehome is acquired by a mobilehome retailer, who is not licensed as a dealer pursuant to Section 18002.6 of the Health and Safety Code, for affixation by the retailer to a permanent foundation, or for other use or consumption (except demonstration or display while holding for sale in the regular course of business), prior to sale, the mobilehome retailer may not issue a resale certificate. The mobilehome retailer shall notify the vendor that the purchase is for consumption and not for resale. When a mobilehome manufacturer or other vendor is informed or has knowledge that the purchaser will install the mobilehome on a permanent foundation prior to its resale, the manufacturer or other vendor is not making a sale for resale. Such vendor is making a taxable retail sale and cannot accept a resale certificate in good faith.

(fi) MOBILE TRANSPORTATION EQUIPMENT. ~~Any person, not exempt from use tax pursuant to Section 6352 of the Revenue and Taxation Code, who leases mobile transportation equipment and who is the consumer thereof, may issue a resale certificate to the equipment vendor for the limited purpose of reporting use tax on the fair rental value of the mobile transportation equipment person, other than a person exempt from use tax, such as under Revenue and Taxation Code section 6352, who purchases mobile transportation equipment for the sole purpose of leasing that equipment, may issue a resale certificate for the limited purpose of reporting use tax based on fair rental value as provided in Regulation 1661.~~

~~(g) Improper Use of Certificate. Except when a resale certificate is issued in accordance with the terms of subdivisions (e) or (f):~~

~~(1) A purchaser, including any officer or employee of a corporation, is guilty of a misdemeanor if the purchaser gives a resale certificate for property which the purchaser knows at the time of purchase will be used rather than resold. Such improper use of a certificate also may cause the purchaser to become liable for penalties called for by Sections 6072, 6094.5, 6484, or 6485.~~

Regulation 1668
Resale Certificate.

~~—(2) Any person, including any officer or employee of a corporation, who gives a resale certificate for property which he or she knows at the time of purchase is not to be resold by him or her or the corporation in the regular course of business is liable to the state for the amount of tax that would be due if he or she had not given such resale certificate.~~

Draft

APPENDIX A**California Resale Certificate****I HEREBY CERTIFY:**

1. I hold valid seller's permit number _____
2. I am engaged in the business of selling the following type of tangible personal property:

3. This certificate is for the purchase from _____ of the item(s) I have listed in paragraph 5 below. [Vendor's name]
4. I will resell the item(s) listed in paragraph 5, which I am purchasing under this resale certificate in the form of tangible personal property in the regular course of my business operations, and I will do so prior to making any use of the item(s) other than demonstration and display while holding the item(s) for sale in the regular course of my business. I understand that if I use the item(s) purchased under this certificate in any manner other than as just described, I will owe use tax based on each item's purchase price or as otherwise provided by law.
5. Description of property to be purchased for resale:

6. I have read and understand the following:

For Your Information: A person may be guilty of a misdemeanor under Revenue and Taxation Code section 6094.5 if the purchaser knows at the time of purchase that he or she will not resell the purchased item prior to any use (other than retention, demonstration, or display while holding it for resale) and he or she furnishes a resale certificate to avoid payment to the seller of an amount as tax. Additionally, a person misusing a resale certificate for personal gain or to evade the payment of tax is liable, for each purchase, for the tax that would have been due, plus a penalty of 10 percent of the tax or \$500, whichever is more.

<u>Name of Purchaser</u>	
<u>Signature of Purchaser, Purchaser's Employee or Authorized Representative</u>	
<u>Printed Name of Person Signing</u>	<u>Title</u>
<u>Address of Purchaser</u>	
<u>Telephone Number</u>	<u>Date</u>

APPENDIX B

California Resale Certificate for the Auto Body Repair and Painting Industry

I HEREBY CERTIFY:

1. I hold valid California seller's permit no. _____.
2. I am engaged in the business of selling the following type of property: _____.
3. This certificate is for the purchase from _____ of the item(s) I have *initialed* in paragraph 5 below.
[Vendor's name]
4. I will resell the following item(s) I am purchasing under this resale certificate in the form of tangible personal property in the regular course of my business operations, and I will do so prior to making any use of the item(s) other than demonstration and display while holding the item(s) for sale in the regular course of my business. I understand that if I use the item(s) purchased under this certificate in any manner other than as just described, ***I will owe use tax*** based on each item's purchase price or as otherwise provided by law.
5. I am purchasing for resale under this resale certificate the item(s) indicated by my *initials* below (***not*** an X or similar mark):

_____ Automobile parts	_____ Fisheye eliminator	_____ Polishes/Wax	_____ Sealers
_____ Clear Coats	_____ Glues / Adhesives	_____ Primers	
_____ Electrical Tape	_____ Hardeners	_____ Putties	
_____ Fillers	_____ Paints	_____ Rust Protectors	
_____ Other (specify items) _____			
6. I have read and understand the following:

Note: Auto body repair and paint shops are generally considered consumers of the items listed below regardless of the manner in which they bill their customers for repairs and painting. Thus, this certificate generally may ***not*** be used to purchase these items. If a person does, in fact, resell any of the following items prior to use, the person may take a deduction on his or her sales and use tax return to offset the amount paid as tax (the deduction is taken under "Tax-paid purchases-resold"). If, however, a person is purchasing one of these items exclusively for resale in the form of tangible personal property and not for consumption during repairs, painting, or the like, this certificate may be used to purchase such item by listing it under "Other" above.

<u>Abrasives</u>	<u>Equipment repair parts</u>	<u>Masks</u>	<u>Reducers</u>
<u>Books</u>	<u>Goggles</u>	<u>Metal conditioners</u>	<u>Respirators</u>
<u>Cans</u>	<u>Hand cleaners</u>	<u>Paint remover</u>	<u>Rubbing compounds</u>
<u>Cleaning solvent</u>	<u>Manuals</u>	<u>Plastic bottles</u>	<u>Rubbing machines</u>
<u>Color charts</u>	<u>Masking paper</u>	<u>Polishing compounds</u>	<u>Thinners</u>
<u>Equipment</u>	<u>Masking tape</u>	<u>Polishing machines</u>	<u>Touch-up bottles</u>

7. I have read and understand the following:

For Your Information: A person may be guilty of a misdemeanor under Revenue and Taxation Code section 6094.5 if the purchaser knows at the time of purchase that he or she will not resell the purchased item prior to any use (other than retention, demonstration, or display while holding it for resale) and he or she furnishes a resale certificate to avoid payment to the seller of an amount as tax. Additionally, a person misusing a resale certificate for personal gain or to evade the payment of tax is liable, for each purchase, for the tax that would have been due, plus a penalty of 10 percent of the tax or \$500, whichever is more.

Name of Purchaser

Signature of Purchaser, Purchaser's Employee or Authorized Representative

Printed Name of Person Signing

Address of Purchaser

Title

Date: _____ 20 _____

Telephone Number: _____



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
(PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
TELEPHONE (916) XXX-XXXX
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JOHAN KLEHS
First District, Hayward

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Second District, Stockton

CLAUDE PARRISH
Third District, Torrance

JOHN CHIANG
Fourth District, Los Angeles

KATHLEEN CONNELL
Controller, Sacramento

JAMES E. SPEED
Executive Director

Tax Permittee

Use of "XYZ" Letter Procedure to Verify Claimed Sales for Resale

This letter summarizes the sample letter procedure explained to you by our auditor. The auditor questioned certain sales claimed on your tax returns as sales for resale because they were not supported by a valid resale certificate taken in good faith at the time of sale.

Under the California Sales and Use Tax Law, you as the seller are liable for payment of the tax unless you can present satisfactory evidence that the property was in fact purchased by your customer for resale or that your customer paid the tax directly to this state.

If the auditor has also questioned sales other than resale, such as sales in interstate and foreign commerce, sales to the United States Government, or transportation charges, documentation to support the claimed exemption must also be provided. The auditor will provide you with an information sheet describing how the law applies and the type of supporting documentation required to support the questioned claimed exempt sale.

The "XYZ" letter procedure outlined in this document is recommended by the Board as a method by which you, the seller, can help to satisfy the burden of proving that a sale was not at retail even though a resale certificate was not timely obtained, or your customer paid the tax directly to the state. This procedure should only be used when you cannot locate the appropriate supporting documentation, such as resale certificates, purchase orders, sales contracts, etc., within your company records.

It is recommended that the "XYZ" response forms be returned directly to the Board. However, you may choose to have the letters returned to you for forwarding to the Board. In either case, the auditor will review all documentation submitted. Because the XYZ letter is not a substitute for a timely resale certificate, you or your customer may be required to submit additional documentation or information to your auditor. You should be aware that if the auditor determines the "XYZ" process is appropriate and you choose to have the forms returned directly to you instead of to the Board, the likelihood of having staff contact your customer or sending an additional mailing will be greater.

The attached sample letter and statement form are provided for your convenience. If the statement form does not fit your particular circumstances, the auditor will work with you to customize the form. You may reproduce the statement form and send it to the customers in question to obtain their signed statements regarding the disposition of the purchased property. If you choose the recommended procedure to have the forms returned directly to the Board, the auditor will provide return envelopes.

In order to communicate fully with your customers, you may

Customize the letter by placing the text on your letterhead.

If you choose the recommended procedure to have the responses sent directly to the Board, you may add a statement in the letter to your customer asking that your customer send you a copy of the response by fax or mail.

If your agreement of sale permits it, ask your customer to forward payment of tax if the transaction is identified as taxable. You should clearly indicate that the tax should be forwarded to you and not to the Board of Equalization.

Please note that any changes you make to the sample letter or form must be approved by Board staff before mailing.

The auditor will allow a four week period for you to send the statements and for your customers to reply. If you have chosen the recommended procedure to have the responses sent directly to the Board, the auditor will timely provide you copies of the responses received. While the auditor will carefully consider the statements received within the allowed period, late responses may be reviewed and allowed if appropriate.

Please be aware that a statement will not be accepted as satisfactory proof if incomplete, if found to be untrue, or if the Board has or receives information that refutes such statement. Unlike a valid resale certificate, a purchaser's statement of resale taken after the sale does not relieve the seller of liability for the tax if it is found that the property was purchased for the buyer's use and the applicable tax was not paid to the state prior to the date of your letter to your customer.

STATE BOARD OF EQUALIZATION
Sales and Use Tax Department

SAMPLE LETTER
Requesting Purchaser's Statement

XYZ Company
1234 5th Street
Los Angeles, California 90013

Auditors of the California State Board of Equalization are currently examining our records in connection with the California Sales and Use Tax Law. They have questioned certain nontaxed sales made to you, as covered by the invoices listed on the attached sheet.

Would you please indicate the disposition of this property by checking the appropriate box and completing the statement. The board will **not** accept the statement if it is not filled out completely and signed by an authorized representative.

Your prompt response is necessary to support any claims for exemption that are in order. Please return the inquiry statement within 10 days using the enclosed envelope or fax to (____) _____.

**STATEMENT CONCERNING PROPERTY PURCHASED
WITHOUT PAYMENT OF CALIFORNIA SALES TAX**

DMA _____

Auditor's Initials _____

Please complete this inquiry statement to indicate the disposition of certain non-taxed purchases you made from the seller listed below. Please fill out the form completely, check the appropriate boxes, and sign as your company's authorized representative. The form should be returned within 10 days.

NAME OF SELLER FROM WHOM YOU PURCHASED ITEMS WITHOUT SALES TAX

SELLER'S PERMIT NUMBER

DATE	INVOICE NUMBER	PURCHASE ORDER NUMBER	AMOUNT	DESCRIPTION

Please check the appropriate box(es) below. If none of these apply, please explain below.

- ☐ The above property was purchased for resale and was resold in the form of tangible personal property. It was not used for any purpose other than retention, demonstration, or display while being held for sale in the regular course of business.
- ☐ The above property was purchased for resale and is presently in resale inventory. It has not been used for any purpose other than retention, demonstration, or display while being held for sale in the regular course of business.
- ☐ The above property was purchased solely for leasing and was so leased. Tax has been paid directly to the Board measured by the purchase price or rental receipts ("tangible personal property"); or tax has been paid measured by the purchase price or fair rental value ("mobile transportation equipment").

The above property was purchased for resale but consumed or used (whether or not resold); or

- ☐ The above property was purchased for our own use and not for resale; and
- ☐ tax in the amount of _____ was paid directly to the Board with our sales tax return for the reporting period _____.
- ☐ tax in the amount of _____ was added to the billing and remitted to the Seller.

tax was paid directly to the Board by the purchaser pursuant to an assessment against the purchaser developed either on an actual basis or statistical basis.

- ☐ the purchase is a taxable transaction and tax is applicable.

COMMENTS

NATURE OF BUSINESS

PURCHASER'S SALES TAX PERMIT NUMBER

PURCHASER'S NAME

SIGNATURE OF PURCHASER, PURCHASER'S EMPLOYEE OR
AUTHORIZED REPRESENTATIVE

TELEPHONE NUMBER

DATE

PRINT NAME OF PERSON SIGNING

TITLE

CITY